

---

---

**BZA-1838  
BURTON POOLS, LLC  
Variance**

**STAFF REPORT  
October 20, 2011**

---

---

---

---

**BZA-1838**  
**BURTON POOLS, LLC**  
**Variance**

**Staff Report**  
**October 20, 2011**

---

---

**REQUEST MADE, PROPOSED USE, LOCATION:**

Petitioner, with consent from the homeowners Benjamin & Michelle Ballard, is requesting a variance to permit a rear setback of 3' instead of the required 10' for an in-ground swimming pool (considered an accessory structure) at 4754 Saintsbury Court. The recently completed single-family home is in the R1-zoned portion of Hickory Ridge Subdivision, Phase 1, Lot 115, Wea 15 (SW) 22-4. (UZO 4-2-2)

**AREA ZONING PATTERNS:**

This lot and all adjacent properties are zoned R1, Single-family Residential; another portion of the subdivision is zoned PDRS. The homes south of Mondavi Boulevard, the main road in and out of the subdivision, are single-family homes on their own lot but zoned PDRS. The area north of Mondavi is a mix of one-plex and four-plex condos zoned PDRS. The remainder of the Hickory Ridge Subdivision is zoned R1.

Hickory Ridge is accessed from CR 250 East just south of CR 450 South. This area of the county is predominately single-family subdivisions; Benjamin Crossing, Avalon Bluff, Masons Ridge, Stones Crossing, and Valley Lakes Subdivisions are all within a mile of Hickory Ridge.

There have been no BZA cases in this development.

**AREA LAND USE PATTERNS:**

The main land uses in this area of the county are low-density residential, institutional uses, and row crop production. This subdivision consists of single-family homes, a church and condos.

The lot directly behind lot 115 is identified on the Hickory Ridge Subdivision Section 1 plat as Outlot B and is designated to be used for drainage, utilities, and recreation; the plat also states that the lot is to remain in the ownership of the homeowners association.

**ENVIRONMENTAL AND UTILITY CONSIDERATIONS:**

This site is served by city sewer and water. There are no easements of any kind in the backyard of this lot that would potentially impact the placement of an in-ground pool.

**STAFF COMMENTS:**

Petitioner is requesting a variance of three feet from the rear property line instead of the required ten feet for an accessory structure. The homeowner would like to place the in-

ground pool on the lot so that it would encroach into the rear setback. The homeowner feels that there is limited space for a standard size pool on the lot without disturbing the existing patio.

Staff feels that the site could be changed (for example, the existing patio could be incorporated into the layout for the proposed pool and the apron around the pool) to meet the requirements of the ordinance. Or the pool could be constructed with a smaller size or different shape (for example, kidney-shaped instead of rectangular) and still meet the required setbacks. The ordinance is not imposing a hardship on this site; denying the petitioner a pool would not result in a hardship, since the property is being used as it was originally intended to be used: residentially. However, it is also true that because a smaller or differently shaped pool could be installed on site and still meet the rear accessory structure setback, it is only the property owners' wish for a pool of this size and shape that is necessitating a variance.

Regarding the ballot items:

1. The Area Plan Commission on October 19, 2011 determined that the variance requested **IS NOT** a use variance.

And it is staff's opinion that:

2. Granting this variance **WILL NOT** be injurious to the public health, safety, and general welfare of the community. The pool will still have the state-required pool safety cover to prevent accidents.
3. Use and value of the area adjacent to the property included in the variance request **WILL NOT** be affected in a substantially adverse manner. The adjacent property to the rear is an undeveloped common area owned by the homeowners association. Denying the variance will not prevent the primary use of a single-family residence and a pool would still be permitted if it meets the ordinance requirements.
4. The terms of the zoning ordinance are being applied to a situation that **IS** common to other properties in the same zoning district. While the width of this particular lot narrows to the rear of the house making a slightly smaller backyard area, this is not a completely unknown situation for lots in residential subdivisions. All properties in the R1 zone are required to have ten foot setbacks for accessory structures from the rear property line. A pool is considered an accessory structure.
5. Strict application of the terms of the zoning ordinance **WILL NOT** result in an unusual or unnecessary hardship as defined in the zoning ordinance. The home owner has constructed a home and back patio on the site in the last year. The pool could be moved closer to the home if the patio was reconstructed. Cost and convenience is not considered a hardship.

**Note:** Questions 5a. and 5b. need only be answered if a hardship is found in Question 5 above.

5a. The hardship involved **IS** self-imposed or solely based on a perceived reduction of or restriction on economic gain. The variance is only required because of the location, size and shape of the proposed pool; therefore, this request is self-imposed since the pool could be constructed differently. Additional expense cannot be used as a hardship justifying a variance.

5b. The variance sought **DOES NOT** provide only the minimum relief needed to alleviate the hardship. The minimum relief in this case would be no relief, meeting the 10' required setback.

**STAFF RECOMMENDATION:**

Denial